

**Conservation Commission  
December 13, 2021  
Minutes**

1. **Chairman's Welcome and Media Notification:** Mr. Haworth opened the meeting at 6:35p.m. Ms. McClees read the protocol for Zoom meetings and open Public Meeting Law.

Ms. McClees advised that the meeting was being conducted remotely, consistent with Chapter 20 of the Acts of 2021. The legislation suspends the requirement of Open Meeting Law to have all meetings in a publicly accessible physical location.

For this meeting, the Conservation Commission convened by telephone and video conference via Zoom as posted on the Town's website identifying how the public may join. The meeting was recorded and will be televised at a later date and some attendees participated by phone and video conference and used chat on Zoom.

2. Quorum/Attendance: Present: Chairman, Geoff Haworth, Karen Isherwood, Gary Lavalette, Michael Kelly, Jacob Galary, and Amy DeSalvatore. Non-voting consultant, Ron Medina was also present. All members were attending via zoom. Staff: Whitney McClees, Conservation Agent  
Absent: Corey Pietraszek  
Michael Kelly left the meeting at 7:30 p.m.

3. Review and approve minutes

- a) Mr. Haworth made a motion to approve the November 1, 2021 minutes and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (6-0).

4. Requests for Certificates of Compliance

- a) SE 023-1289, CON 19-034: **48 Torrington Road**

Ms. McClees gave an update on the Order of Conditions, which was originally issued March 4, 2019. There was amendment done March 27, 2020 that reduced the scope of the project, which reconfigured the house footprint. There was a subsequent determination the installation of a small greenhouse and slight extension to the rear patio. Based on a site visit and the submitted as-built foundation, it appears the project has been constructed in substantial compliance with the issued permit. The grading appears to be correct; the landscaper submitted a letter stating that the plans were followed.

The as-built foundation shows the house to be approximately half a foot off. The agent's recommendation is to issue a Certificate of Compliance with Complete Certification with the continuing conditions that were included with the amended order, as outlined in the staff report. Ms. McClees verified there was no planting plan associated with the Order of Conditions.

Mr. Haworth made a motion to issue a Certificate of Compliance with Complete Certification for 48 Torrington Road, SE 023-1289, CON 19-034, with the three conditions found in the December 7, 2021 staff report. The motion was seconded by Ms. DeSalvatore and passed unanimously via roll call vote (6-0).

5. **Public Hearings** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and/or the Code of the Town of Fairhaven Chapter 192, Wetlands:

**Request for Continuance or Withdrawal**

a) SE 023-1356, CON 023-229: **12-18 Rio Way**

Notice of Intent filed by George Mock, Nye Lubricants, Inc., for stormwater upgrades and reductions in impervious surface associated with building upgrades at the property located at 12-18 Rio Way, Assessors Map 19, Lot 242. Work to take place in the Riverfront Area and 100-foot buffer zones to Coastal Bank and Coastal Beach.

Mr. Haworth made a motion to continue 12-18 Rio Way, SE 023-1356, CON 023-229, to February 14, 2022. The motion was seconded by Ms. DeSalvatore and passed unanimously via a roll call vote (6-0).

b) SE 023-1365, CON 023-250: **86-88 Middle Street**

Request for Amended Order of Conditions filed by Patrick Carr, A1 Crane Company, for the installation of concrete on 100% of the lot, a permanent structure, a concrete wall and fence, and associated stormwater at the property located at 86-88 Middle Street, Assessors Map 11, Lots 6D, 6E & 7. Work to take place in Land Subject to Coastal Storm Flowage.

Mr. Haworth made a motion to continue 86-88 Middle Street, SE 023-1365, CON 023-250, to January 3, 2022 and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

c) SE 023-1345, CON 023-206: **2 Oxford Street**

Notice of Intent filed by Robert Weeks, 2 Oxford Street, LLC, for the construction of a fixed pier, gangway, and floating docks at the property located at 2 Oxford Street, Assessors Map 13, Lot 1. Work to take place in Land Under the Ocean, Land Containing Shellfish, Land Subject to Coastal Storm Flowage, and the 100-foot buffer zone to Coastal Beach.

Mr. Haworth made a motion to continue 2 Oxford Street, SE 023-1345, CON 023-206, to January 3, 2022 and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

d) SE 023-1367, CON 023-254: **0 & 277 Bridge Street**

Abbreviated Notice of Resource Area Delineation filed by Bridge Street Holdings LLC, requesting confirmation of all jurisdictional resource areas under the Wetlands Protection Act and Fairhaven Wetlands Bylaw at the property located at 0 and 277 Bridge Street, Assessors Map 30A, Lots 87 & 87A.

Mr. Haworth made a motion for 0 & 277 Bridge Street, SE 023-1367, CON 023-254, to withdraw without prejudice and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

Ms. McClees recommended the withdrawal since they were not asking for any additional resource area boundaries that have not already been approved through 2024.

**Abbreviated Notices of Resource Area Delineation**e) SE 023-1366, CON 023-251: **Bridge Street, Map 36, Lot 15J**

Abbreviated Notice of Resource Area Delineation filed by Paul Downey, Fairhaven Properties, LLC, requesting confirmation of all jurisdictional resource areas under the Wetlands Protection

Act and Fairhaven Wetlands Bylaw at the property located at Bridge Street, Assessors Map 36, Lot 15J.

Ms. McClees notified the Board that the applicant revised a plan to incorporate the peer reviewer's comments and additions, which have all been completed and included in the staff report. The plan has not yet included information about the storm water basin, nor has it incorporated the intermittent stream determination. That determination should include associated file numbers related to the bank, to ensure the intermittent stream delineation does conform to the Wetlands Protection Act. Until that additional information is submitted, Ms. McClees recommended that the applicant request a continuance.

Steve Gioiosa, with SITEC Environmental Consultants is the Fairhaven Properties representative. He stated that the case had continued to tonight's meeting to allow time for the peer reviewer to complete a review. The plans have been revised and the applicant did not challenge any of the proposed alterations. However, there are other items related to the delineation that should be discussed with the Commission.

The first item had to do with adding notations on the plan, with regards to other filings related to the intermittent stream. SITEC provided a letter dated November 10, 2021 and sent it to the Commission, along with the 5 most recent filings. The Commission has approved the resource area delineated in the vicinity of the gas station/convenience store, which is valid until 2024.

The second element dealt with river bank delineation. The reviewer could not make a firm determination in defining the river bank. Mr. Gioiosa stated SITEC's delineation was conducted in a drier time of the year. It is shown on the plan that the stream was delineated and given intermittent status. The plan is not looking to do any work within the resource area, and is limited to the parking lot area with minor maintenance to the detention basin.

Since the peer reviewer could not find an outlet to the basin, the detention pond was discussed as being a resource area. There is an outlet control structure and pipe drainage system that eventually leads down into Bridge Street. Reviewing aerial photographs gives evidence it is an active detention basin, with numerous catch basins. It collects storm water from the parking lot and then allows that water to be detained and travel down gradient. Since the Basin was constructed after the year 2000, it was believed to be grandfathered in by the Wetlands Protection Act. The applicant does not view the basin as a protected resource area, and therefore does not believe there is any additional data to be provided, but will defer to the Commission.

Mr. Haworth asked when the detention pond was constructed and asked if they have all records indicating it was maintained properly. Records are needed for ANRAD purposes. Mr. Gioiosa stated they are not proposing any activity in that area and the detention pond was constructed under a proper Order of Conditions. Mr. Haworth stated maintenance records are required under the MassDEP Stormwater Management Policy Standards, and should be submitted as part of documentation.

Mr. Gioiosa reiterated it is not a resource area, and unsure how it ties into an ANRAD filing. Mr. Haworth reasons this is this is part of a bigger filing going forward. Mr. Gioiosa stated they are not making a determination about the pond, other than it is a detention pond. The detention pond was constructed in accordance with an approved Order of Conditions and designed, constructed, and installed after November 18, 1996, in accordance with 310 CMR 10.04.

Mr. Haworth still insists that if the pond is not maintained, then it has reverted back into a wetland.

Mr. Gioiosa agreed to review this topic internally and bring forth such documentation to the Board. He will analyze the Order of Conditions granted, including provisions, and related stipulations.

Mr. Lavalette cited there is only one roadway, which makes crossing that intermittent stream challenging. He asked Mr. Gioiosa if it will need to be widened.

Mr. Gioiosa stated there will be a low intensity use proposed for this property. Some of the improvements proposed will be contributing to higher water quality. There will be no need to widen or add additional capacity to the existing driveway. They may be looking at alternative access directly toward Bridge Street and enter West of the stream crossing.

Ms. Isherwood would like to see peer reviewer comments/responses with an overview, especially as it pertains to maintenance records.

Ms. McClees added the peer reviewer is not in agreement with flags 1-4 at the top of the bank. If SITEC has removed them, it should be incorporated in the revision.

Mr. Gioiosa acknowledges he still needs to go before the Planning Board. He would also like to continue to the January 24, 2022 meeting, to ensure the reviewer has responded to changes.

Mr. Haworth made a motion to continue Bridge Street, Map 36, Lot 15J SE 023-1366, CON 023-251, to January 24, 2022 and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

#### **Request for Amended Order of Conditions**

f) **SE 023-1349, CON 023-213: Cherrystone Road, Map 43B, Lots 313, 314 & 315**

Request for Amended Order of Conditions filed by John Kalife for the changes to the approved plan resulting from modifications to the house design and the elimination of the septic system at the property located at Cherrystone Road, Assessors Map 43B, Lots 313, 314 & 315. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees stated this was approved earlier in the year and a revised plan includes the elimination of the septic system. They will be tying into the sewer, creating a reduction in the amount of fill proposed. There is also a reconfiguration of the proposed dwelling and driveway, due to eliminating the septic. Overall, the scope of the project has reduced the amount of fill in the flood zone. It is still proposed to be one foot above the flood zone elevation, required for the AE flood zone.

Since it is not in the velocity flood zone, Ms. McClees recommended to close the public hearing and issue an amended Order of conditions for plans dated November 1, 2021. Additionally, this will require wet ink signatures – no electronic signatures are permissible.

Mr. Lavalette asked if the applicant has any paperwork documenting the fact that he can actually tie into the sewer.

Mr. Kalife, the applicant's representative, will provide paperwork on sewer tie ins.

Scott Gobar, property owner of 175 Ebony Street, stated tie ins for sewer would need to be done to Cherrystone Road and the DPW would need to be contacted to excavate the road.

Mr. Haworth made a motion for an amended Order of Conditions under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw for Cherrystone Road, Map 43B, Lots 313, 314 & 315, SE 023-1349, CON 023-213, for plans dated November 1, 2021 with the conditions and 47 conditions found in the staff report dated November 3, 2021. The Board will approve plans dated November 1, 2021 and close the public hearing. The motion was seconded by Mr. Galary and passed unanimously via roll call vote (6-0).

g) SE 023-1309, CON 023-110: **1 Bella Vista Island**

Request for Amended Order of Conditions filed by Heiam Alsawalhi for the revision and clarification of special conditions for the Order of Conditions issued August 13, 2021 under both the Wetlands Protection Act and Fairhaven Wetlands Bylaw. No change in approved work is proposed.

Mr. Haworth made a motion to continue 1 Bella Vista Island, SE 023-1309, CON 023-110, and was seconded by Mr. Galary. The motion passed unanimously via roll call vote (6-0).

**Notices of Intent**

h) SE 023-1369, CON 023-255: **10 Diamond Street**

Notice of Intent filed by Ruby and Jaime Medeiros for the construction of a garage, mud utility room, and expansion/reconstruction of the existing dwelling at the property located at 10 Diamond Street, Assessors Map 29, Lots 46 & 72. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone Bordering Vegetated Wetland.

Mr. Haworth made a motion to continue 10 Diamond Street, SE 023-1369, CON 023-255, to January 24, 2022 and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

i) SE 023-1370, CON 023-256: **Winsegansett Avenue, Map 42A, Lots 232, 232A & 233**

Notice of Intent filed by Alexander and Elizabeth Kalife, Trustees of the Kalife Residence Trust, for the reconstruction of the existing garage with a flood-zone compliant garage at the property located at Winsegansett Avenue, Assessors Map 42A, Lots 232, 232A & 233. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Coastal Beach.

Ms. McClees gave a brief overview, stating the applicant is seeking to demolish an existing garage and construct a replacement two-story structure with associated septic system.

MA GIS Oliver, maps a good portion of the property as barrier beach, whereas the coastal zone management maps show the barrier beach ending short of the property. Included in the packets are excerpts from the coastal manual, written by Coastal Zone Management and mass DEP for Conservation Commissions reviewing projects within a coastal resource area.

In discussing the discrepancy between the coastal zone management barrier beach layer and MA GIS Oliver with Coastal Zone Management representatives, they indicated that the property could possibly be a barrier beach, due to the presence of a salt marsh on the upland side of the property. Additionally, the state representative for the National Flood Insurance Program indicated that the project does meet the free of obstruction requirements for FEMA, along with state flood zone building codes.

The property has been used as a garden, so the proposal site for the garage consists of fill. If the site is in fact in coastal dune, then the project design would not comply with the performance

standards and more information would be needed. Ms. McClees left it up to the Commission to discuss how they would like to proceed.

Dave Davignon from Schneider, Davignon and Leone, represented the applicant. He stated the owner had obtained a Variance from the Zoning Board of Appeals. The Board of Health approved a bathroom on the second floor, during which time the applicant went to Ms. McClees to inform of the possible barrier beach. The applicant did not want to proceed on a Notice of Intent without resolving this issue. Mr. Davignon recommended Stan Humphries, a preeminent coastal geologist in Southeastern MA, to determine if this is a barrier beach/coastal dune.

Mr. Humphries conducted multiple site visits and communicated with Ms. McClees. Although Oliver depicts the site as coastal beach, he feels the map is in error. The Coastal Zone Management maps are more consistent to what Mr. Humphries witnessed at the site.

Stan Humphries, Coastal Geologist with Environmental Consulting and Restoration (ECR), Plymouth, MA addressed the Commission in regards to the coastal beach. Four tests were completed specifically in the area of the proposed project; at depth, there was no fill nor any medium sized grains of quartz. It was silty loam which matches soils mapped by the National Resources Conservation Service (NRCS). Soils found next door, to the east and west, are consistent with each other and interpreted to be packed-in soil – essentially till. This is how MA GIS has mapped this vicinity. While there could be dunes beneath the fill, it is not likely to be below glacial material.

Mr. Haworth asked where on the plan are the actual test pits, in relation to the new garage.

Mr. Davignon clarified that test pits were conducted on both sides of the wall. Everything below the loam was natural occurring material going down to depths of 8 feet, which is below the mean high-water line.

Mr. Haworth asked why there was no test pit directly where the garage was being built.

Mr. Davignon stated those test pits were for septic system purposes (perc tests). The test pits were performed about 10 feet off the existing garage.

Mr. Haworth stated that within coastal zones, material could change within 5 feet.

Ms. Isherwood questioned evidence of testing pits and their depth. She would like to see someone of the Commission's choosing to witness a test pit survey.

Mr. Davignon stated the depth goes down to 96 inches or 8 feet. He clarified that a certified soil evaluator (C.S.E.) with the Commonwealth and the town health agent were present and signed off on them. Soil logs in the garden reflect the garden material is anywhere between 30-36 inches. Once below garden material, it was all-natural occurring material from 2.5 feet to 8 feet.

Mr. Isherwood would like someone of the Commission's choosing to properly identify the site and apply proper performance standards.

Mr. Davignon stated performance logs cite Jay McKinnon, C.S.E. with the Commonwealth of MA and Health Agent, David Flaherty, inspected the pits.

Mr. Haworth clarified that Mr. Humphries was not present during the test pits, but was sent this information from the soil evaluator on site.

Mr. Davignon asserted that Mr. Humphries did his own test pits to support his evaluation.

Mr. Humphries confirmed he did not conduct 8-foot test pits; he only went down a foot or two with an auger. He was hitting stones in excess of 2 inches. These stones are not indicative of sand dune environments. An excavator is needed to go down 8 feet.

Mr. Humphries also mentioned if the C.S.E determined it was fill, they would have noted that in the report.

Mr. Haworth's concern is the soil evaluator and health agent were not looking for coastal dune material, but suitable soils for a septic system.

Mr. Humphries believes if they discovered beach material, or any sandy material, it would have been properly classified as such in their logs.

Ms. DeSalvatore feels that with complex areas the Board needs a peer review by a coastal geologist.

Ms. Isherwood stated she would like to see another test pit conducted, for fear there was more fill on the garden beds than they logged. She would like deeper test a different location.

Mr. Davignon confirmed soil logs went down 4 feet total across the whole stretch of the lot, parallel to Monondach Avenue. The extent of the fill on that site is anywhere from 30 inches to 37 inches, based on the soil log. Everything below that is naturally occurring material; there is no more fill on that lot other than the garden loam and that was verified by the health agent who is a C.S.E.

Mr. Galary was against a peer review as it assumes the Commission is questioning a professional's integrity.

Mr. Haworth advocated for a peer review, since the test was performed for the purpose of a septic system.

Mr. Lavalette was not sure conducting a test 8 feet from the where they initially tested would provide much different soil data.

Mr. Davignon asked if test pit conducted somewhere in the back of the garage and existing stone masonry wall would cover the Commission's concerns. He also invited Commissioners to witness the test.

Ms. McClees asked if the MA DEP and Coastal Zone Management Coastal manual was used in delineating the resource area. This manual offers guidelines for Commissions to apply performance standards when delineating coastal areas, and should not be ignored.

Mr. Humphries responded that he provided technical comments for that manual. The precise delineation is not what he was intending to conduct on this property. He was not trying to delineate a barrier beach or delineate a landward or seaward boundary of a dune, only deciphering if it is a dune or not. He referred to official United States Geological Survey (USGS) guides, NRCS soil classifications, and certified soil evaluators. He believes these sources gave him enough information for the task and precluded the necessity of doing transects for precise delineation, shown in the coastal zone management manual.

Ms. McClees understood and appreciated the input, but still guided the Board to make sure due diligence is done; if we do have a resource area of coastal dune or barrier beach, then performance standards should be applied appropriately. These standards are much different than the standards for land subject to coastal zone flowage.

Mr. Davignon agreed to do an additional test pit in the proposed garage area, instead of going through the peer review process.

**Action:** Mr. Haworth asked Ms. McClees to witness the test pit.

Ms. Isherwood made a motion to have a third-party coastal geologist conduct another peer review to determine the coastal resource area boundaries on the property, as well as ensure compliance to the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Ms. DeSalvatore and passed by a 3-2 vote. Mr. Haworth and Mr. Galaray were not in favor.

Mr. Davignon asked specifically what tasks the peer reviewer would perform. He was concerned of an open-ended peer review and wanted to discuss the scope of the work with the Commission.

Mr. Haworth suggested a continuation for Mr. Davignon so he could discuss a possible peer review with his client.

Mr. Lavalette was convinced by Mr. Haworth that material may change closer to the garage and would like one more test pit in that location. He does not feel a full peer review is necessary.

Mr. Davignon asked for a motion on the scope of services from the Board, in regards to the peer review.

Mr. Haworth made a motion that the extent of the peer review only be a test pit within the proposed new garage area and was seconded by Mr. Lavalette. The motion carried 3-2. Ms. DeSalvatore and Ms. Isherwood were not in favor.

**Action:** Ms. McClees to coordinate/engage a third-party reviewer.

Mr. Haworth made a motion for Winsegansett Avenue, Map 42A, Lots 232, 232A & 233, SE 023-1370, CON 023-256, to continue to January 24, 2022 as requested by the applicant's representative and was seconded by Mr. Galaray. The motion passed unanimously via roll call vote (5-0). Michael Kelly left the meeting during this hearing.

j) SE 023-1371, CON 023-257: **1 & 2 Marsh Island**

Notice of Intent filed by Buzzards Bay Coalition for an Ecological Restoration Limited Project to restore a historically filled salt marsh at the property located at 1 & 2 Marsh Island, Assessors Map 15, Lot 1 and Assessors Map 17, Lot 129. Work to take place in Bordering Vegetated Wetland, Riverfront Area, Salt Marsh, Coastal Beach, Coastal Bank, and Land Subject to Coastal Storm Flowage.

Sara Quintal, Coastal Ecologist for the Buzzards Bay Coalition (BBC) and Project Manager for the project gave an overview of the history of the project. The project has been in the works for over a decade and is located just South of Interstate 195 and West of Riverside cemetery in the New Bedford Harbor. The property is owned and monitored by two conservation entities, the Fairhaven-Acushnet Land Preservation Trust (FALPT) and the BBC, which owns the south half.

The technical and Funding partners include the New Bedford Harbor Trustee Council, NOAA, the Mass Division of Ecological Restoration and the National Fish & Wildlife Foundation. Overall, the site is around 22 acres and 11 acres of salt marsh will potentially be restored. Historically, most of



the property was marsh. It was designated as a New Bedford Harbor dredge disposal site from the 1930's to 1950s. Fortunately, it has been assessed as clean material.

This site is the largest restoration project in all of Buzzards Bay. The plan was completely put together and approved back in 2010. A few hurdles prevented it from going to construction. The radio towers on the property have posed an issue in the past.

The BBC will scoop out historically placed fill from the center of the island, in order to create 10.7 acres of marsh, fed by a tidal creek system. The tidal creek entrance would occur on the west side of the property, with plantings to the north and south of that tidal creek inlet.

The perimeter of the marsh provides maintenance access and a recreational trail for the community. There is a parking lot planned on the southeast corner of the west end of Tapper Street.

Phase one will begin Fall of 2022, with estimated completion mid-2023, assuming all permits are finalized.

Ms. McClees stated Mass DEP has issued a file number so we can move forward. In addition, a letter was received from the Department of Marine Fisheries (DMF) regarding seasonal restrictions, which was added as a condition outlined in the staff report.

Ms. Quintal added the BBC worked out an agreement with Riverside cemetery, which owns the access road directly northeast of the property from River Avenue and the marina. This will serve as an access road for both phases of the project. The BBC has coordinated with the DPW to ensure being sensitive to the sewer easement and infrastructure. There will be checkpoints before, during, and after, to make certain no infrastructure was harmed.

Mr. Haworth made a motion to close the public hearing for 1 & 2 Marsh Island, SE 023-1371, CON 023-257, and issue an Order of Conditions under the Wetland Protection Act and the Fairhaven Wetlands Bylaw with the 37 recommended conditions, as outlined in the staff report dated December 8, 2021. Also included are the approved plans dated November 1, 2021, which added the last condition required by the Division of Marine Fisheries. The motion was seconded by Ms. DeSalvatore and passed unanimously via roll call vote (5-0).

k) SE 023-\_\_\_\_, CON 023-258: **89 Akin Street**

Notice of Intent filed by Daniel Pounds for the removal of the existing house and construction of a new residence with town water and sewer connections and associated site work at the property located at 89 Akin Street, Assessors Map 30B, Lots 54-67. Work to take place within Riverfront Area and the 100-foot buffer zone to Bordering Vegetated Wetland.

MassDEP had not yet issued a file number.

Mr. Haworth made motion to continue 89 Akin Street, SE 023-\_\_\_\_, CON 023-258, until January 3, 2022 and was seconded by Ms. Isherwood. The motion passed unanimously (5-0).

l) SE 023-\_\_\_\_, CON 023-259: **10 Littleneck Road**

Notice of Intent filed by Paul and Francesca Federico for the construction of a new flood-zone compliant foundation on which to place the existing house and an addition, the construction of a new deck, and associated site work at the property located at 10 Littleneck Road, Assessors Map 43A, Lots 86 & 87. Work to take place in Land Subject to Coastal Storm Flowage.

MassDEP had not yet issued a file number.

Mr. Haworth made a motion to continue 10 Littleneck Road, SE 023-\_\_\_\_, CON 023-259, and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (5-0).

6. **Violations/Enforcement Orders/Cease and Desist Notices**

a) **47 Mangham Way**

Ms. McClees discussed a complaint received for a filling of a wetland and diverting water onto neighboring properties. She conducted a site visit and the diversion of water was previously addressed by an enforcement order by the Commission for discharging grey water off property.

There are wetlands present on either side of the property and looking back at historic aerials, it appears that the property has been clear since 1961, well prior to the Wetlands Protection Act. The Commission could look into fill placed since the enactment of the Wetlands Protection Act. The adjacent properties show a wetland line to run across the property with the tree line, so it is very possible this was a wetland filled prior to the WPA. Any future work done on the property falls within a buffer zone to a wetland, and would need review and approval by the Commission.

Mr. Haworth stated this property has been in violation before, where the Commission ordered they remove the pipes. They did stop the grey water pipes, but did not address water from other sources flowing into the neighboring property and a resource area. They failed to follow the last enforcement order.

The property has recently changed ownership to Edward Gonet III. He is aware of the pipe incident back in 2018 and all house plumbing has been rerouted to go into the septic system. He stated the water being discharged now is from a sump pump and the down spout.

Mr. Haworth recommended the Board sends the property owner a letter stating the issue must be rectified within 6 months.

**Action:** Ms. McClees to send letter and check back in 6 months.

Mr. Haworth made a motion that the owner of 47 Mangham Way works with Ms. McClees on a timeline to remove piping and redirect water. The motion was seconded by Ms. Isherwood and passed unanimously via roll call vote (5-0).

b) North Street, Map 15, Lot 43

Ms. McClees updated the Commission on the enforcement order issued requiring that a restoration plan be submitted no later than November 8, 2021 and restoration work start December 1, 2021. Erosion and sedimentation control should be placed inside of the boulders to prevent runoff into the marsh.

Currently, there has been no indication of a professional wetland scientist that has expertise in saltmarsh ecology to be involved in the restoration plan design. Another motion from the Commission is needed with a definitive timeline. Additionally, the \$1,200 fine associated with this violation has not yet been paid.

Mr. Haworth made a recommendation that the applicant submit all the requested restoration plans by January 17, 2022, to appear at the January 24, 2022 meeting. The \$1200 fine is also due by January 17, 2022.

Ms. McClees added the enforcement order is to return to preconstruction conditions, with additional conditions added for approval. Conditions to keep in mind prior to the restoration, include removing filter fabric and resetting clean stone.

Mr. Lavalette would like to see the applicant finish the fence, once fines are paid.

Ms. McClees felt the fence should only be completed once a restoration plan has been approved and the marsh is brought back into preconstruction conditions. The Board needs consistency with Stop Work Order protocols.

Mr. Haworth made a motion for North Street, Map 15, Lot 43, to require submission of a restoration plan that meets all of the Commission's requirements by January 16, 2022 and for the applicant's representative to appear before the Commission on January 24, 2022. The existing \$1200 fine must be paid by January 17, 2022. The motion was seconded by Ms. DeSalvatore and passed unanimously via roll call vote (5-0).

## **7. Correspondence**

- a) None

## **8. Ongoing Projects**

- a) SE 023-1340, CON 023-195: **1 Bella Vista Island**

Ms. McClees briefed the Commission on the Order of Conditions for the non-administrative consent order work, the approved landscaping plan. The Commission previously voted on an updated timeline because it had not begun by August 31, 2021 as required by the Order. The Commission approved the revised timeline by the engineer, stating that if work had not begun by December 1, 2021, a fine of \$300 a day would commence.

The applicant's representative indicated they hired a company to begin the work. Ms. McClees received request today regarding this landscaping project and an amendment request for the January 3, 2022 meeting (the deadline for that meeting has passed). Such amendments include leaving the fruit trees and other vegetation, which have habitat value sub-surface elements to avoid erodible conditions. Electrical fixture boxes will be removed. The representative also requested to allow work to continue during the 2022 growing season, specifically stating it will begin on March 30, 2022 and end by June 30, 2022. Lastly, they requested daily fines to be suspended beginning December 13, 2021.

Mr. Haworth stated the Commission should suspend fines as of today, but if they do not present a plan and timeline on January 24, 2022, fines will go into effect retroactively and continue onward. Furthermore, if the Commission and applicant agree on a starting date and the applicant does not begin by agreed upon date, fines will be reinstated retroactively starting with December, 1, 2021.

**Action:** Ms. McClees will notify the applicant and representatives that there will be fines assessed from December 1, 2021 to December 12, 2021. Fines will be suspended until they present at the January 24, 2022 meeting. At which point, the Commission would consider the requested amendment.

Mr. Haworth made a motion for 1 Bella Vista Island, SE 023-1340, CON 023-195, to comply with the Stop Work Order and submit fines from December 1, 2021 through December 12, 2021. The applicant will submit an amendment request by the filing deadline for the January 24, 2022 meeting. Fines will be suspended until such time. If they fail to submit by the deadline, fines will resume retroactively back to December 1, 2021. The motion was seconded by Ms. Isherwood and passed unanimously via roll call vote (5-0).

#### 9. Upcoming Projects

Ms. McClees stated she received two new filings. One for Fisherman Road, DPW paving and drainage and the other to reconstruct a single-family home for flood zone compliance.

#### 10. General Business

a) Bills:

- \$1000 refund to John Kalife for an unused peer review deposit for Bass Creek ANRAD.
- \$2100 refund to MCZ Realty for unused portion of the peer review deposit.
- \$260 for Neighborhood News for the November 1, 2021 and the November 15, 2021 meetings advertisements.

- b) Conservation Office Closures – Office will remain open until 12:30 on December 16, 2021. The office is completely closed on December 17; Open Monday December 20, 2021 until 12:30 and closed December 21-January 2.

- c) Next Meeting: January 3, 2022

#### 11. Any other business that may properly come before the Commission not reasonably anticipated 48 hours in advance of the meeting.

Mr. Haworth made a motion to adjourn at 9:39 p.m. and was seconded by Mr. Lavalette. The motion passed unanimously via roll call vote (5-0).

Respectfully submitted,

Kelly Camara

Recording Secretary